

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.1344 of 2019

Prabha @ Prabhavathi
Vs

... Petitioner

P.Selvakumar

... Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. praying to call for the records pertaining to the order dated 25.10.2019 passed by the Judicial Magistrate No.2, Vridhachalam in Crl.M.P.No.646 of 2019 in M.C.No.1 of 2012 and set aside the same.

For Petitioner :M/s.A.Indirani

For Respondent :Mr.S.Thankasivan

ORDER

Challenging the order dated 25.10.2019 passed by the Judicial Magistrate No.2, Vridhachalam in Crl.M.P.No.646 of 2019 in M.C.No.1 of 2012, the petitioner/ wife has filed this Criminal Revision Case.

2.The facts of the case are that the petitioner and the respondent got married on 13.12.2007. After some time, she started suffering domestic violence in the hands of the respondent. Subsequently, she left the matrimonial home and filed a maintenance petition in MC.No.1 of 2012 before the Judicial Magistrate No.2, Vridhachalam. By order dated 26.10.2015, the said petition was partly allowed, directing the respondent to pay a compensation of Rs.5,00,000/- to the petitioner, within a period of three months. Aggrieved over the same, the petitioner filed C.A.No.85 of 2015 seeking enhancement of compensation, whereas the respondent filed C.A.No.91 of 2015 to set aside the same. Both the appeals were disposed of by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, vide common judgment dated 02.06.2016, as per which, the appeal filed by the respondent was dismissed, whereas the appeal filed by the petitioner was partly allowed enhancing the compensation to Rs.15,00,000/-. The said common judgment was

challenged by the parties by filing CrI.RC.Nos.767, 838 and 1139 of 2016, which were dismissed by order of this Court dated 12.11.2018. Feeling aggrieved, the respondent filed SLP (C) Diary No.21549 of 2019, which came to be dismissed on 18.10.2019. In such circumstances, the petitioner filed a petition in CMP.No.646 of 2019 in MC.No.1 of 2012 under Sections 20 and 22 of the Domestic Violence Act r/w Section 128 Cr.P.C. seeking enforcement of the compensation of Rs.15,00,000/- awarded by the Lower Appellate Court. By order dated 25.10.2019, the said petition was disposed of, directing the respondent to immediately pay the compensation of Rs.15,00,000/- without any fail and also giving liberty to the petitioner to file afresh application, along with required particulars. Being dissatisfied with the order so passed by the trial Court, the petitioner has come up with the present Criminal Revision.

3.The learned counsel for the petitioner submitted that though the judgment of the Lower Appellate Court, awarding compensation of Rs.15,00,000/- to the petitioner has attained finality as the same was confirmed by this Court as well as by the Supreme Court, the respondent has not come forward to effect any payment to the petitioner, till date; however, the trial Court, without fixing any time limit, has simply directed the respondent to pay compensation to the petitioner immediately; and hence, the said order is liable to be dismissed and enforcement order be issued against the respondent.

4.Per contra, the learned counsel for the respondent submitted that Section 128 Cr.P.C cannot be applicable to enforce the order granted under the provisions of the Domestic Violence Act. He further submitted that the respondent has no sufficient means to pay such huge amount as compensation and hence, he may be permitted to settle the same in monthly instalments.

5.Heard the rival submissions and perused the records.

6.Admittedly, the judgment of the Lower Appellate Court granting compensation of Rs.15,00,000/- to the petitioner, has attained finality. Seeking a direction to enforce the same, the petitioner has preferred an Execution Petition. The trial Court, after having considered the contentions raised by the parties and based on the decisions rendered by the other High Courts, has observed that the compensation granted under Section 22 of the DV Act can be enforced by adopting the recovery procedure as provided under Section 125(3) Cr.P.C. With regard to the relief of enforcement order, the trial Court has held that the petitioner did not furnish any details as regards the movable or immovable properties standing in the name of the respondent and hence, no attachment order to recover the compensation of

Rs.15,00,000/- can be passed against the respondent, mechanically. The trial Court has ultimately directed the respondent to immediately make payment of Rs.15,00,000/- as compensation in full payment without fail; and further granted liberty to the petitioner to file fresh application under Section 125(3) Cr.P.C along with list of movable and immovable properties with supporting documents to establish the ownership of the respondent, for the purpose of passing suitable orders to recover the unpaid sum from him.

7.A perusal of the order impugned herein would reveal that the petitioner has failed to furnish any details with regards to the movable and immovable properties standing in the name of the respondent before the trial Court. In the absence of such particulars, no enforcement order can be passed for recovery of the compensation payable by the respondent. Hence, the trial Court has rightly directed the respondent to make payment in full immediately and granted liberty to the petitioner to file a fresh application with the relevant details pertaining to the properties of the respondent. This Court finds no infirmity or illegality in the order so passed by the trial Court.

8.In fine, this Criminal Revision Case stands dismissed. However, the petitioner is at liberty to file a fresh application along with the required particulars with regard to the properties movable and immovable, standing in the name of the respondent, in the manner known to law and on filing of such application, the trial Court shall consider the same and pass appropriate orders as expeditiously as possible.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.2,
Vridhachalam.

2.-Do- Thro The Chief Judicial Magistrate,
Cuddalore.

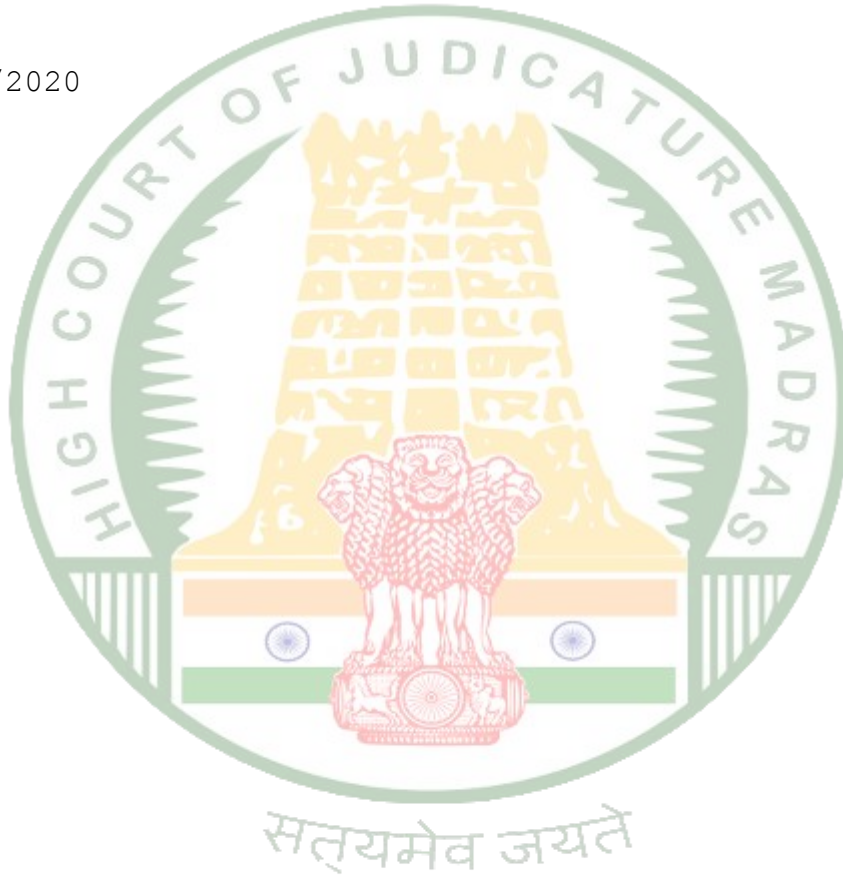
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3.The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

+1cc to Mr.A.Indirani, Advocate Sr.12508

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kk[co]
srg 06/03/2020



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